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OCT - 2 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 2, 2001

VIA HAND DELIVERY

Dorothy T. Attwood, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554Re: Petition of Cox Virginia Telcom, Inc. for
Arbitration of an Interconnection Agreement
with Verizon Virginia Inc.
CC Docket No. 00-249 /

Dear Ms. Attwood:

I am writing to inform you of the activities concerning Cox's Motion to Enforce August 17 Order in the above-referenced proceeding, and to renew Cox's request that the Commission act on that motion. As you know, Cox's motion seeks to enforce the Commission's determination that Verizon's use of the term "Internet Traffic" in its proposed contractual language for Issue I-5 should be struck "to the extent that the proposed definition seeks to introduce an issue beyond the implementation of the Commission's recent order governing intercarrier compensation for ISP-bound traffic." At the September 26 prehearing conference, Cox and Verizon agreed to discuss possible modifications to Verizon's proposed contract language that would address that holding and bring Verizon's language within the scope of the proceeding.

Following the prehearing conference, Cox agreed to provide Verizon with language to address this concern, and did so by e-mail on September 27. The language changes Cox proposed were simple: substitute the term "Measured Internet Traffic" (which describes ISP-bound traffic) for the term "Internet Traffic" (which includes phone-to-phone IP telephony) in seven paragraphs of Verizon's proposed contract language. Cox's proposed changes would modify provisions in Verizon's proposal that would otherwise directly affect compensation for, and other treatment of, IP telephony and any other traffic that touches the Internet. To date, Verizon has not agreed to Cox's proposal or provided any proposed language of its own.¹

¹ Copies of the e-mail correspondence between the parties, including the proposed language attached to Cox's initial e-mail, are attached hereto.

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List ABCDE

Dorothy T. Attwood, Esq.

October 2, 2001

Page 2

Consequently, Cox renews its request that the Commission enforce the August 17 Order. Cox submits that the Commission can do so by ordering Verizon to modify its contractual language for Issue I-5 in accordance with the proposal included in Cox's September 27 e-mail and attached hereto.

In light of the imminence of the hearing on Issue I-5, Cox also hereby provides notice that it intends to raise this request as a preliminary matter at the opening of the evidentiary hearing on October 3.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.G. Harrington', with a stylized flourish at the end.

J.G. Harrington

JGH/

Attachments

cc: As per attached service list

CERTIFICATE OF SERVICE

I, Sherene McDougall, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 2nd day of October, 2001, copies of the foregoing correspondence were served as follows:

TO FCC as follows (by hand):

Dorothy T. Attwood, Chief (8 copies)
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jeffrey Dygert
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Katherine Farroba
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

TO AT&T as follows:

David Levy
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

Mark A. Keffer
AT&T
3033 Chain Bridge Road
Oakton, Virginia 22185

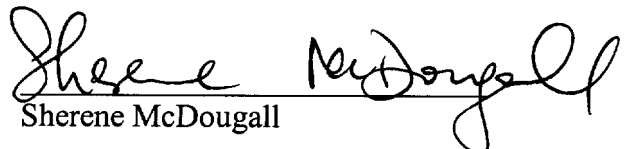
TO VERIZON as follows:

Richard D. Gary
Kelly L. Faglioni
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

Karen Zacharia
David Hall
1515 North Court House Road
Suite 500
Arlington, Virginia 22201-2909

TO WORLDCOM as follows:

Jodie L. Kelley, Esq.
Jenner and Block
601 13th Street, NW
Suite 1200
Washington, DC 20005


Sherene McDougall

Attachment 1

September 27 E-mail from J.G. Harrington to David Hall
(with attachment)

Harrington, J.G.

From: Harrington, J.G.
Sent: Thursday, September 27, 2001 4:59 PM
To: 'David Hall (E-mail)'
Subject: Virginia arbitration - Issue I-5 language

This message is from the law firm of Dow, Lohnes & Albertson. If you received this transmission in error, please call us immediately at (202) 776-2000 or contact us by E-mail at dlalaw@dlalaw.com. Disclosure or use of any part of this message by persons other than the intended recipient is prohibited.

As we discussed at yesterday's pre-hearing conference, Cox has prepared proposed revisions to Verizon's proposed contract language for Issue I-5. That language is attached. It makes what Cox believes to be the minimum changes necessary for Verizon to comply with the Commission's August 17 order partially granting the Cox motion to strike, and is marked against the language Verizon included in the most recent Joint Decision Point List. Although Cox believes that these changes will bring Verizon's language back within the scope of Issue I-5, Cox is not proposing it as a resolution of the issue.

As you know, the staff expressed an interest in having this matter addressed prior to the beginning of the hearing. For that reason, to the extent that Verizon cannot agree to make these changes, Cox proposes that the parties convene a conference call on Monday, October 1 at 10:30 am to discuss appropriate changes to implement the August 17 order.

Please inform me if any questions should arise in connection with this message.

J.G. Harrington

Counsel to Cox Virginia Telcom, Inc.

*jharrington@dlalaw.com
202/776-2818 (v)
202/776-2222 (f)*

10/2/2001

1.60a "Reciprocal Compensation Traffic" means Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. Reciprocal Compensation Traffic does not include: (1) any Measured Internet Traffic; (2) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (3) Optional Extended Local Calling Arrangement Traffic; (4) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; or, (5) Tandem Transit Traffic.

4.2.1 Trunk Types. Section 4 describes the architecture for Interconnection of the Parties' facilities and equipment over which the Parties shall configure the following separate and distinct trunk groups:

Traffic Exchange Trunks for the transmission and routing of terminating Reciprocal Compensation Traffic, Tandem Transit Traffic, Measured Internet Traffic, translated LEC IntraLATA toll free service access code (e.g. 800/888/877/866) traffic, IntraLATA Toll Traffic between their respective Telephone Exchange Service customers pursuant to Section 251 (c)(2) of the Act, in accordance with Section 5;

5.5 Grades of Service

Traffic Exchange trunk groups provided by either Party for Reciprocal Compensation, Measured Internet, and IntraLATA Toll traffic will be engineered using a design blocking objective of B.01 (Blocking Level B.01 - high-day-network-busy-hour blocking standard). Where Interconnection for Reciprocal Compensation, Measured Internet, and IntraLATA Toll traffic is provided via a Party's Tandem, all final trunk groups between that Party's Tandem switch and its End Office switches will be engineered using a design blocking objective of B.01. Access Toll Connecting trunk groups provided by the Parties for Exchange Access traffic will be engineered using a design blocking objective of B.005 (Blocking Level B.005 - high-day-network-busy-hour blocking standard).

5.7.2 Transport and termination of the following types of traffic shall not be subject to the Reciprocal Compensation arrangements set forth in this subsection 5.7, but instead shall be treated as described or referenced below:

(d) No Reciprocal Compensation shall apply to Measured Internet Traffic.

5.7.4 The determination of whether traffic is Reciprocal Compensation Traffic or Measured Internet Traffic shall be performed in accordance with Paragraphs 8 and 79, and other applicable provisions, of the FCC Internet Order (including, but not limited to, in accordance with the rebuttable presumption established by the FCC Internet Order that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Measured Internet Traffic, and in accordance with the process established by the FCC Internet Order for rebutting such presumption before the Commission).

5.7.7 The Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Measured Internet Traffic shall be governed by the terms of the FCC Internet Order, and other applicable FCC orders and FCC Regulations. Notwithstanding any other provision of this Agreement or any Tariff, a Party shall not be obligated to pay any intercarrier compensation for Measured Internet Traffic that is in excess of the intercarrier compensation for Measured Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations.

7.1 Information Services Traffic

The following provisions shall apply only to Cox-originated Information Services Traffic directed to an Information Services platform connected to Verizon's network, should Cox elect to deliver such traffic to Verizon. At such time as Cox connects Information Services platforms to its network, the Parties shall agree upon a comparable arrangement for Verizon-originated Information Services Traffic. The Information Services Traffic subject to the following provisions is circuit switched voice traffic, delivered to information service providers who offer recorded announcement information or open discussion information programs to the general public. Information Services Traffic does not include Measured Internet Traffic.

EXHIBIT A

All instances of "Internet Traffic" to be changed to "Measured Internet Traffic."

Attachment 2

September 27 E-mail from David Hall to J.G. Harrington

Harrington, J.G.

From: david.k.hall@verizon.com
Sent: Thursday, September 27, 2001 5:58 PM
To: jharrington@dlalaw.com
Subject: Re: Virginia arbitration - Issue I-5 language



VerizonI-5Language.doc

c

I was expecting this yesterday. I also don't know what you mean when you say: "Although Cox believes that these changes will bring Verizon's language back within the scope of Issue I-5, Cox is not proposing it as a resolution of the issue." What are you proposing as the resolution of the issue?

At the pre-hearing conference, I said that if Cox was claiming that compensation for IP telephony was not going to be decided in this proceeding, then I thought we could work it out, but that if Cox was claiming that the compensation for IP telephony was going to be decided, then Verizon was entitled to put forth its position. You responded that Cox did not want compensation for IP telephony to be at issue. It was on that basis that we agreed to try to resolve the issue. I was therefore expecting that when you said you would send me some language, that you would propose a resolution of the issue.

David K. Hall

1515 North Courthouse Rd.
Suite 500
Arlington, VA 22201-2909
tel. # 703-351-3100
fax # 703-351-3651

jharrington@dl
alaw.com

To: David K. Hall/EMPL/VA/Verizon@VZNotes

cc:

09/27/01
04:59 PM

Subject: Virginia arbitration - Issue I-5
language

This message is from the law firm of Dow, Lohnes & Albertson. If you received this transmission in error, please call us immediately at (202) 776-2000 or contact us by E-mail at <mailto:dlalaw@dlalaw.com> dlalaw@dlalaw.com. Disclosure or use of any part of this message by persons other than the intended recipient is prohibited.

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J.G. Harrington

Counsel to Cox Virginia Telcom, Inc.

<mailto:jharrington@dlalaw.com> jharrington@dlalaw.com
202/776-2818 (v)
202/776-2222 (f)

(See attached file: VerizonI-5Language.doc)

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Attachment 3

September 28 E-mail from J.G. Harrington to David Hall

Harrington, J.G.

From: Harrington, J.G.
Sent: Friday, September 28, 2001 6:01 PM
To: 'david.k.hall@verizon.com'
Subject: RE: Virginia arbitration - Issue I-5 language

This message is from the law firm of Dow, Lohnes & Albertson. If you received this transmission in error, please call us immediately at (202) 776-2000 or contact us by E-mail at dlalaw@dlalaw.com <<mailto:dlalaw@dlalaw.com>>. Disclosure or use of any part of this message by persons other than the intended recipient is prohibited.

Thank you for your message.

It is Cox's view, affirmed by the FCC's August 17 order, that Verizon's proposed language for Issue I-5 raised new issues, concerning compensation for IP telephony and other treatment of traffic that traverses the Internet, that were beyond the scope of that issue. Our proposal was intended to eliminate those new issues from the proceeding, as directed by the August 17 order.

Although I believed that the context in which Cox was making this proposal was clear, your response suggests that may not have been the case. As you know, the August 17 order partially granted Cox's motion to strike Verizon's proposed language for Issue I-5. In particular, the order held that it was beyond the scope of Issue I-5 to use the term "Internet Traffic," as defined in Verizon's proposed language, in any way that affected terms and conditions of the agreement other than those related to compensation for ISP-bound traffic. Cox subsequently filed a motion to enforce the August 17 order after being informed by Michael Oates that Verizon did not believe it needed to make any changes to its proposed language to conform to that order.

What Cox proposed to do at the prehearing conference was to offer language that Cox believes will cure Verizon's noncompliance with the August 17 order. Cox did not propose to offer language to resolve Issue I-5; indeed, it is Cox's understanding from negotiation sessions in July that Verizon will not alter the basic elements of its proposal. For that reason, Cox believes it will be necessary to arbitrate how the FCC's ISP-bound traffic order is to be implemented in the parties' interconnection agreement. To the extent that Verizon would like to discuss resolving the issue as a whole, I would suggest that your negotiation team call or e-mail Marvel Vigil, Cox's negotiator.

As I said at the prehearing conference, Cox's sole interest in seeking enforcement of the August 17 order is to eliminate the new issues raised by Verizon's current proposed language, that is, the matters that go beyond compensation for ISP-bound traffic. Cox does not intend to raise any new issue concerning the treatment of or compensation for phone-to-phone IP telephony and does not believe the language sent to you yesterday to address the August 17 order does so.

Further, Cox does not believe that there is, or should be, any controversy regarding the treatment of traffic based on the method by which the traffic is transmitted. The portions of the agreement that are not in dispute contain no provisions that differentiate traffic based on the mechanism or protocol used to transmit that traffic. In other words, under the agreement neither the status of traffic as local, toll, access or any other category nor the compensation for that traffic is related to whether it is transmitted via traditional circuit switching, over microwave facilities, using packet-switched IP methods or through any other transmission mechanism that might be developed in the future. To the extent Verizon wished to raise such questions, it is Cox's view that it should have done so during the negotiation process or, at the latest, in Verizon's response to Cox's petition for arbitration.

I hope this discussion is helpful to you in evaluating Cox's proposal to address the requirements of the August 17 order.

J.G. Harrington

Counsel to Cox Virginia Telcom, Inc.

jharrington@dlalaw.com
202/776-2818 (v)
202/776-2222 (f)

-----Original Message-----

From: david.k.hall@verizon.com [<mailto:david.k.hall@verizon.com>]
Sent: Thursday, September 27, 2001 5:58 PM
To: jharrington@dlalaw.com
Subject: Re: Virginia arbitration - Issue I-5 language

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David K. Hall

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